



February 11, 2002

Ms. Larissa T. Roeder
Assistant District Attorney
County of Dallas
Frank Crowley Courts Building, LB 19
Dallas, Texas 75207-4399

OR2002-0629

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157829.

The Dallas County District Attorney's Office (the "DA") received a request for "any documents related to a complaint made to the [DA's] Public Integrity Unit by Dr. Lois Parrott, or by any other person, regarding alleged violations of the Texas Open Meetings Act by the Dallas Independent School District with respect to the 2001 redistricting process." You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You state that the DA received the request for information on October 29, 2001. You informed this office by telephone that you took your request for a decision to the county mailing room on the morning of November 12, 2001, ten days after the DA received the request. However, the U. S. mail postmark on the letter is November 13, 2001, which is eleven days after the day the DA received the request. See Gov't Code 552.308. (the requirement is met in a timely fashion if the document is sent by first class United States mail properly addressed with postage prepaid and it bears a post office cancellation mark indicating a time within that period). You do not represent that the DA faxed to this office the request for a decision before or on the tenth day. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code.

You suggest that the ten-day deadline was tolled. You inform us by telephone that, on the morning of November 9, 2001, the requestor indicated that the instant request would be withdrawn. You also inform us that her decision to proceed with this request was made on the afternoon of November 9, 2001.

We do not believe that these discussions with the requestor on November 9th tolled the ten-day deadline. The ten-day deadline may be tolled during a clarification process between the requestor and the governmental body when a governmental body seeks clarification because a request is unclear or when the request is too broad. See Gov't Code § 552.222(b); Open Records Decision No. 663 at 5 (1999). The ten-day deadline is tolled during the clarification process but resumes upon receipt of the clarification on the day the clarification is received. See Open Records Decision No. 663 at 5. Here, you do not indicate that the request was unclear or too broad, or that the DA was seeking clarification of the request. Thus, any attempt by the requestor to temporarily withdraw the request does not amount to the DA requesting clarification in accordance with section 552.222(b). Thus, the ten-day deadline was not tolled during the time that the requestor may have attempted to temporarily withdraw the request. Furthermore, even if we believed that these circumstances involved the DA's clarification of the request, no tolling has occurred because any potential withdrawal and reinstatement of the request occurred on the same day. Consequently, because the request for a decision was not timely made, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); see Open Records Decision No. 630 (1994). You claim that the requested information is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. However, these are discretionary exceptions to disclosure under the

Public Information Act which may be waived by a governmental body.¹ See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Furthermore, the department has not demonstrated a compelling reason to withhold the information under section 552.108 of the Government Code. But see Open Records Decision No. 586 (1991) (need of another governmental body provides compelling reason for nondisclosure under section 552.108). Thus, we conclude that the requested information must be released to the requestor. We caution, however, that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

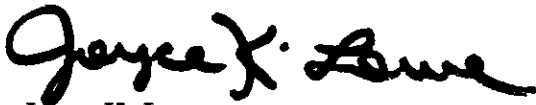
¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. See, e.g., Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 473 (1987) (governmental body may waive section 552.111), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Joyce K. Lowe". The signature is fluid and cursive, with the first name "Joyce" being more prominent.

Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 157829

Enc: Submitted documents

c: Ms. Dawn Kahle Doherty
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(w/o enclosures)